

Case Summary

Diaunte E. Adams (“Adams”) appeals his sentence for Child Molesting, as a Class B felony.¹ We affirm.

Issue

Adams raises the sole issue of whether his sentence is inappropriate.

Facts and Procedural History

A transcript of the guilty plea hearing has not been provided for our review.² Accordingly, the facts contained in this Opinion are taken from the Pre-Sentence Investigation Report, the Appellant’s Brief, and the Appendix.

Adams, twenty-six years old, was living with and engaged to a woman with two children. Her niece K.R., twelve or thirteen years old, would frequently babysit the children. Adams and K.R. became close, and K.R. confided in him. At some time between May and September of 2006, they had unprotected sex on at least three occasions. “[Adams] related [K.R.] gave birth to their baby boy . . . in April of 2007.” Pre-Sentence Investigation Report at 30.

The State charged him with Child Molesting, as a Class A felony. Adams and the State offered a plea agreement, accepted by the trial court, in which Adams pled guilty to Child Molesting, as a Class B felony. The agreement left the sentence to the discretion of the trial court.

At the sentencing hearing, the trial court found no mitigating circumstances, but found

¹ Ind. Code § 35-42-4-3.

three aggravating circumstances: (a) “the harm suffered by the victim of the offense was significant and greater than the elements necessary to prove the commission of the crime,” Adams’ criminal history, and his position of trust with the victim. Appendix at 21. The probation officer recommended and Adams requested the imposition of a twelve-year sentence with four years suspended to probation. The State requested a fifteen-year sentence to be fully executed. The trial court sentenced Adams to sixteen years in prison, all of which was to be executed.

Adams now appeals.

Discussion and Decision

Under Indiana Appellate Rule 7(B), this “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant “must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). The term of imprisonment for a Class B felony must be between six and twenty years, with the advisory sentence being ten years. Ind. Code § 35-50-2-5. Therefore, Adams’ sentence is greater than the advisory term, but less than the maximum.

As to the nature of the offense, Adams, then twenty-six, had unprotected sex on multiple occasions with a twelve- or thirteen-year-old. She was frequently employed to babysit children in his household, allowing him to build and then take advantage of a trusting

² A transcript of the sentencing hearing was in the record.

relationship with her. By virtue of his acts, she became pregnant and delivered a child, although she is herself still a student.

Meanwhile, regarding his character, Adams has an extensive history of criminal conduct and gang membership. From 1993 to 2003, or ages thirteen to twenty-three, Adams was arrested thirteen times, resulting in two true findings of delinquency, two felony convictions, two misdemeanor convictions, and two revocations of probation. He became a gang member at age thirteen and sold drugs, recruited members, and participated in gang fights and turf wars. He still is a member of the same organization. He is the father of several children, although the record is not clear as to the exact number. He is \$4000 in arrears in child support payments. Prior to the instant offense, Adams was using marijuana two to three times a week.

Having reviewed the record and the trial court's decision, we conclude that Adams' sentence is not inappropriate.

Affirmed.

NAJAM, J., and CRONE, J., concur.